

RECEIVED
CENTRAL FAX CENTER

AUG 31 2004

ZILKA-KOTAB

PC
ZILKA, KOTAB & FEECE™95 SOUTH MARKET ST., SUITE 420
SAN JOSE, CA 95113TELEPHONE (408) 971-2573
FAX (408) 971-4660

FAX COVER SHEET

Date: August 31, 2004	Phone Number	Fax Number
To: Board of Appeals & Interferences, USPTO		(703) 872-9306
From: Kevin J. Zilka		

Docket No.: NA11P002/00.056.01

App. No: 09/586,550

Total Number of Pages Being Transmitted, Including Cover Sheet: 08

Message: Please deliver to the Board of Appeals & Interferences. Thank you Kevin J. Zilka
--

☐ Original to follow Via Regular Mail ☒ Original will Not be Sent ☐ Original will follow Via Overnight Courier

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES OR IF YOU ENCOUNTER
ANY OTHER DIFFICULTY, PLEASE PHONE Erica
AT (408) 971-2573 AT YOUR EARLIEST CONVENIENCE

August 31, 2004

RECEIVED
CENTRAL FAX CENTER

AUG 31 2004

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Benzinger et al.) Docket: NAI1P002/00.056.01
)
Filed: 05/31/00) Examiner: Snapp, Sandra S.
)
Serial Number: 09/586,550) Art Unit: 3624
)
FOR: SYSTEM, METHOD AND COMPUTER)
PROGRAM PRODUCT FOR DYNAMIC SYSTEM) Date: August 31, 2004
ADAPTATION USING CONTRACTS)
_____)

Commissioner for Patents
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 1.193)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer on August 11, 2004.

In sections (1) – (9) of the Examiner's Answer, the Examiner recaps the various sections of appellant's appeal brief. Moreover, in section (10), the Examiner substantially reiterates the rejection of a prior Office Action mailed October 22, 2003.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

MAILING

I deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Washington, D.C. 20231.

Date:

8/31/2004

FACSIMILE

✓ transmitted by facsimile to the
Patent and Trademark Office (703) 872-9306.

Signature

Erica L. Farlow

(type or print name of person certifying)

Appellant's Brief--page 1 of 7

Thereafter, in section (11), the Examiner sets forth her response to Appellant's previous arguments included in the recently filed appeal brief. Following is an issue-by-issue reply to the Examiner's Answer.

With regards to Claims 1-4, 6, 7, 9, 11-14, 16, 17 and 19-23, in the Examiner's first paragraph of section (11), the Examiner rebuts applicant's previous arguments that Webber's activation of contracts based on special authorization encryption or signatures simply does not meet appellant's claimed "governing a security-related interaction between a plurality of components" "including an intrusion detection module which is subject to the governing" "utilizing the criteria of the contract" (emphasis added), and that there is simply no teaching, disclosure and/or suggestion in Webber of any sort of governing of a security-related interaction involving an intrusion detection module utilizing the criteria of a contract. Note pages 4-6 of appellant's appeal brief.

Specifically, the Examiner argues that "[t]he Webber reference does disclose a system that governs a security-related interaction between a plurality of components in the system utilizing the criteria of the contract, the components including an intrusion detection module as presently claimed." The Examiner further relies on the following excerpt from Webber to support such assertion.

"The CAP is advantageously designed in a modular fashion so that each function is a separate independent subsystem. These independent subsystems include: security and firewalls, auditing, inventory management, management reporting, accounting, statistical logging and reporting, shipping options, distribution options, purchasing services, delivery/shipping schedules, integration of shipping with suppliers." (col. 14, lines 4-11)

While such excerpt may suggest a "security and firewalls" subsystem, as purported by the Examiner, the simple disclosure of such a security-related module in no way meets applicant's claimed "governing a security-related interaction between a plurality of components" "including an intrusion detection module which is subject to the governing" "utilizing the criteria of the contract" (emphasis added).

Appellant's Brief--page 2 of 7

In the Examiner's second and third paragraphs of section (11) spanning pages 6 and 7 of the Examiner's Answer, the Examiner references applicant's description of the claimed "intrusion detection module" in the originally filed specification, and further makes an attempt to show that such descriptions are met by the following excerpts from Webber:

"Encryption or security 281, 283 may be included in the communication link 259 between the CAP 260 and the selling entities in the supply chain, and between the CAP 260 and the supply chain enterprises 277, respectively." (col. 14, lines 44 - 47)

"Security is preferably provided on the CAP, as is illustrated in FIG. 2. For example, a seller's POS data are assigned an encrypted transactional identifier when transmitted by the computer at the seller to the CAP, thus inhibiting tampering or modification. A shipper's POD data is received at the CAP through the secure link 299 to shippers. Other information which is advantageously transmitted across a secure link to the CAP include dispute resolution data and a seller's POS or PO when received at the CAP. A different level of security can be provided for each of the above, utilizing conventional security protocols and methods." (col. 14, lines 59 - col. 15, line 3)

In response, applicant emphasizes that appellant need not rely on specific selective descriptions and optional functionality in the originally filed specification to distinguish the plain and ordinary meaning of what applicant claims and what Webber at least suggests. Specifically, applicant claims "intrusion detection," or, inherently, the "detection" of "intrusions." Encryption, as taught by Webber in no way even suggests any sort of "detection." Moreover, the mere mention of "security" in no way reaches the level of specificity of "intrusion detection," as claimed. At most, providing a "secure link" and providing "encryption," etc. prevents intrusions, but in no way detects the same, as claimed.

More importantly, even if the Examiner's allegations were assumed, the Examiner has still failed to even address applicant's claimed "governing a security-related interaction between a plurality of components" "utilizing the criteria of the contract" (emphasis added) or, in other words, contact-based security-related interaction among system components.

Again, it appears that the Examiner is trying to stretch Webber's teachings of a security technique for protecting against contract fraud and detecting the authenticity of the contracts themselves, to meet appellant's claimed invention involving governing security-related interaction among components based on a contract. The contracts of Webber govern *commercial* transactions among parties. The only mention of any security-related components is in passing, and simply does not meet appellant's claimed contract-governed security-related interaction.

The Examiner is again reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criteria has simply not been met by the Webber reference, in view of the arguments made hereinabove.

With respect to Claim 21, the Examiner relies on security means 281, 283 to meet applicant's claimed "intrusion detection modules" and col. 12, lines 26-28 to meet applicant's claimed firewall, in the context of applicant's claimed "governing a security-related interaction between ... a plurality of intrusion detection modules, and at least one firewall which are subject to the governing." (emphasis added).

First, for the reasons set forth above, applicant's claimed intrusion detection modules are not met by Webber. Further, there is no disclosed interaction between security means 281, 283 and the disclosed firewall, let alone contract-governed security-related interaction therebetween.

With respect to Claim 22, the Examiner relies on the following excerpt from Webber to make a prior art showing of applicant's claimed "wherein the intrusion detection modules are adapted for communicating information to the analysis module for detecting intrusions."

Appellant's Brief--page 4 of 7

"Encryption or security 281, 283 may be included in the communication link 259 between the CAP 260 and the selling entities in the supply chain, and between the CAP 260 and the supply chain enterprises 277, respectively." (col. 14, lines 44 - 47)

Since it appears that the Examiner is relying on security means 281, 283 to meet applicant's claimed "intrusion detection modules," it is thus clear from the above excerpt and the remaining Webber reference that there is no entity to meet applicant's claimed "analysis module for detecting intrusions" with which security means 281, 283 communicate. Webber is completely devoid with respect to such separate analysis module and related functionality, as claimed.

Continuing, **with respect to Claim 23**, the Examiner relies on the following excerpt from Webber to make a prior art showing of applicant's claimed "wherein information includes generalized intrusion detection objects."

"Security is preferably provided on the CAP, as is illustrated in FIG. 2. For example, a seller's POS data are assigned an encrypted transactional identifier when transmitted by the computer at the seller to the CAP, thus inhibiting tampering or modification. A shipper's POD data is received at the CAP through the secure link 299 to shippers. Other information which is advantageously transmitted across a secure link to the CAP include dispute resolution data and a seller's POS or PO when received at the CAP. A different level of security can be provided for each of the above, utilizing conventional security protocols and methods." (col. 14, lines 59 - col. 15, line 3)

In response, applicant relies just on the plain and ordinary meaning of the claimed "generalized intrusion detection objects" (emphasis added), which is supported by the specification, to distinguish Webber, since Webber does not suggest "intrusion detection," as noted above.

Finally, **with respect to Claims 5 and 15**, the Examiner now relies on the following excerpts from Bigus to make a prior art showing of applicant's claimed "wherein the cost model criteria is based on resource utilization."

"It is the operating system's task to maximize the amount of work that a set of users can perform on a given computer system." (col. 1, lines 34-35)

"One of the major functions performed by computer operating system is resource allocation. Resource allocation involves giving user jobs access to the computer system's resources, such as the central

Appellant's Brief--page 5 of 7

processing unit (CPU), main memory, input/output devices, etc. Over the years many different resource allocation algorithms have been developed for computer systems." (col. 1, lines 42-48)

"It is a principal object of the present invention to provide an enhanced method and apparatus for allocating resources in a system which performs useful work." (col. 2, lines 32-34)

"Another object of this invention is to provide a more efficient technique for constructing accurate computer system performance models." (col. 2, lines 53-56)

Such newly relied upon excerpts, however, are deficient for the same reasons that the previously relied upon excerpt is deficient. Specially, all of such excerpts fail to disclose, teach or even suggest resource utilization in the specific context of cost model criteria, as claimed by applicant.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991).

Again, at least the third element of the *prima facie* case of obviousness has not been met, since the prior art, when combined, fails to meet all of applicant's claim limitations.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due

Appellant's Brief--page 6 of 7

in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P002/00.056.01).

Respectfully submitted,

By: _____

Kevin J. Zilka
Reg. No. 41,429

Date: _____

8/31/04

P.O. Box 721120
San Jose, California 95172-1120
Telephone: (408) 971-2573

Appellant's Brief--page 7 of 7

**This Page is Inserted by IFW Indexing and Scanning
Operations and is not part of the Official Record**

BEST AVAILABLE IMAGES

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☒ **FADED TEXT OR DRAWING**
- ☒ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☐ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** _____

IMAGES ARE BEST AVAILABLE COPY.

As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.